

## Inderjeet Singh a/l Piara Singh v Mazlan bin Jasman & Ors A

HIGH COURT (SHAH ALAM) — SUIT NO 23-19-89  
 JAMES FOONG J B  
 31 OCTOBER 1994

*Tort — Negligence — Professional negligence — Medical profession — Failure of doctors to carry out necessary test before giving treatment — Wrong diagnosis although clear symptoms of urethra injuries — Patient suffered from blood poisoning and sustained brain injuries — Whether doctors had exercised reasonable care and skill expected of them* C

*Tort — Negligence — Apportionment of liability — Motor car collided into motor cycle — Motor car driver 100% liable — Motor cyclist admitted to hospital — Negligence of doctors caused further injuries — Whether damages could be apportioned between driver and hospital* D

*Damages (Personal Injury or Death) — Personal injuries — Fracture of femur, pelvis, tibia and fibula — Abrasions and lacerations — Brain injury and partial quadriplegia*

The plaintiff was collided into by a motor car driven by the first defendant while riding a motor cycle, fracturing his pelvis, right femur, right tibia and fibula. He was treated at the Hospital Besar Tengku Ampuan Rahimah Klang ('the hospital'), of which the second defendant was the medical superintendent, and which belonged to the third defendant, the Government of Malaysia. The doctors at the hospital suspected that the plaintiff also suffered urethra injury, and immediately inserted a catheter into the plaintiff's urethra which was removed four days later, when the plaintiff's condition improved. The plaintiff later urinated blood and had a high fever. Bacteria was found in his urine culture and a suprapubic mass containing urine was also discovered in his abdomen. He was then recatheterized more than five times. Later, the plaintiff lapsed into a coma and it was at this very late stage that he was then transferred to the University Hospital, where the urologist who did the urethrogram test on him found that the plaintiff's urethra had ruptured completely, there was a massive abscess in his pelvic cavity and his bladder was also detached from his urethra. Another neuro consultant who had examined the plaintiff also found that he was unable to vocalize, swallow with ease or walk, and all these could have been caused by septicaemia (blood poisoning) and the lack of blood supply to the brain as a result of the urinary infection. The issue before the court was whether the doctors were negligent in their treatment of the plaintiff, while he was under their care. E  
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- A**        **Held**, awarding damages of RM523,978 for which the first defendant was 20% liable and the second and third defendants 80% liable:
- (1) The doctors had to exercise a fair and reasonable standard of care and skill as expected of an ordinary professional possessing such skill and art when they were treating the plaintiff, or they would be negligent in carrying out their profession.
- B**
- (2) The doctors had neglected to carry out the appropriate tests and treatments upon the plaintiff. First of all, contrary to general medical practice, the doctors did not carry out either the urethrogram test or cystoscopy to ascertain the exact condition of the plaintiff's urethra before treating him. Further, according to accepted medical practice, the catheter inserted in the urethra should not have been removed after four days but should have been left for two to three weeks to enable the urethra to heal on its own. The subsequent reinsertion of the catheter for more than five times also amounted to a very dangerous practice, as that could completely rupture a partially ruptured urethra.
- C**
- (3) The doctors had also diagnosed the swelling of the abdomen of the plaintiff incorrectly, as 'out pouching of the bladder which may be due to inborn' which was extremely remote, when all signs pointed towards urethra injuries. Despite that being suspected from the very beginning, a more conclusive probe into this direction was never carried out.
- D**
- (4) Further, the doctors failed to perform a suprapubic cystostomy, which according to accepted medical practice, could have prevented the plaintiff's brain injury. Instead, the plaintiff was catheterized many more times, causing further and greater injuries and increasing the risk of infection.
- E**
- (5) The court awarded as general damages RM500 per month in nursing care for 26 years; RM12,000 for the fracture of the femur; RM12,000 for the fracture of the tibia and fibula; RM16,000 for the fracture of the pelvis; RM4,000 for abrasions and lacerations; and RM200,000 for brain injury and partial quadriplegia, with interest of 8%pa from date of service of writ to date of judgment. Special damages of RM79,978 were also awarded with interest of 4%pa from the date of accident to the date of judgment. On the total judgment sum, interest of 8%pa was awarded from the date of judgment to the date of realization.
- F**
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- H**

**[Bahasa Malaysia summary]**

Plaintif telah dilanggar oleh sebuah motokar yang dipandu oleh defendan pertama apabila beliau sedang menunggang motosikalnya. Tulang pelvis, tulang femur dan tulang tibia dan fibulanya patah. Beliau telah dirawat di Hospital Besar Tengku Ampuan Rahimah Klang ('hospital itu'), di mana defendan kedua ialah penyelia

**I**

perubatannya, dan yang dipunyai oleh defendan ketiga, iaitu Kerajaan Malaysia. Doktor di hospital itu menyaki bahawa plaintiff juga mengalami kecederaan uretra, dan dengan serta-merta memasukkan kateter ke dalam uretra plaintiff. Kateter itu telah dikeluarkan empat hari kemudian, apabila keadaan plaintiff bertambah baik. Kemudiannya, darah dijumpai dalam air kencing plaintiff dan beliau menjadi demam. Bakteria dijumpai di dalam kultur air kencingnya dan suatu gumpalan suprapubik juga dijumpai di abdomennya. Selepas itu, beliau telah dikateter semula sebanyak lima kali. Plaintiff telah mengalami keadaan koma, dan pada tahap yang sangat lewat ini, baharulah beliau dipindahkan ke Hospital Universiti, di mana ahli urologi yang telah melakukan ujian uretrogram ke atasnya mendapati seluruh uretranya telah ruptur, terdapat suatu bengkak yang berranah di rongga pelvisnya dan ginjalnya juga tersisih daripada uretra. Seorang lagi pakar perunding neuro yang telah memeriksa plaintiff juga mendapati bahawa plaintiff kini tidak boleh bercakap, menelan dengan senang atau berjalan, dan kesemua ini mungkin disebabkan oleh septisemia (peracunan darah) dan kekurangan bekalan darah ke otak akibat daripada infeksi urinarinya. Isu di hadapan mahkamah ialah sama ada doktor-doktor tersebut cuai dalam pemberian rawatan kepada plaintiff, apabila beliau berada di bawah jagaan mereka.

**Diputuskan,** mengawardkan RM523,978 untuk mana defendan pertama didapati bertanggungjawab sebanyak 20% dan defendan kedua dan ketiga bertanggungjawab sebanyak 80%:

- (1) Doktor-doktor mesti mencapai standard berjaga-jaga dan kemahiran yang berpatutan dan munasabah seperti yang dikehendaki daripada seorang profesional yang mempunyai kemahiran dan seni demikian apabila mengubati plaintiff, dan jika tidak, mereka adalah cuai di dalam menjalankan profesion mereka.
- (2) Doktor-doktor tersebut telah mengabaikan ujian dan rawatan yang sewajarnya ke atas plaintiff. Pertama sekali, bertentangan dengan amalan am perubatan, doktor-doktor tersebut tidak menjalankan sama ada ujian uretrogram atau sistoskopi untuk menentukan keadaan uretra plaintiff dengan tepatnya sebelum memberikan rawatan kepada plaintiff. Selain daripada itu, menurut amalan perubatan yang tidak dipertikaikan lagi, kateter yang dimasukkan ke dalam uretra tidak harus dikeluarkan selepas empat hari, tetapi harus ditinggalkan untuk dua hingga tiga minggu untuk membolehkan uretra sembuh dengan sendirinya. Pemasukan kembali kateter itu sebanyak lebih daripada lima kali kemudiannya juga merupakan suatu amalan yang amat merbahaya, kerana ia boleh menyebabkan suatu uretra yang separa pecah itu untuk pecah keseluruhannya.
- (3) Doktor-doktor tersebut juga telah melakukan diagnosis yang salah, sebagai 'suatu bengkak di ginjal yang mungkin disebabkan

- A oleh keadaan sejak lahir' yang tidak kena-mengena kerana kesemua tanda-tanda yang ada membayangkan kecederaan uretra. Walaupun kecederaan uretra telah disyaki sejak awal lagi, penyiasatan yang lebih rapi ke arah itu tidak pernah dilakukan.
- (4) Lagipun, doktor-doktor tersebut telah gagal melakukan suatu sistostomi suprapubik, yang menurut amalan perubatan yang telah diterima umum, dapat menghalang kecederaan otak plaintif. Sebaliknya, plaintif telah dikateter untuk banyak kali lagi, menyebabkan kecederaan selanjutnya yang lebih teruk dan menambahkan risiko jangkitan.
- (5) Mahkamah mengawardkan sebagai ganti rugi am jumlah sebanyak RM500 sebulan untuk jagaan jururawat selama 26 tahun; RM12,000 untuk pematahan tulang femur; RM12,000 untuk pematahan tulang tibia dan fibula; RM16,000 untuk pematahan tulang pelvis; RM4,000 untuk lelasan dan luka; dan RM200,000 untuk kecederaan otak dan kuadriplegia separa, dengan faedah 8% setahun dari tarikh penyampaian writ ke tarikh penghakiman. Ganti rugi khas sebanyak RM79,978 juga diawardkan dengan faedah 4% setahun dari tarikh kemalangan ke tarikh penghakiman. Atas keseluruhan jumlah penghakiman, faedah 8% setahun diawardkan dari tarikh penghakiman ke tarikh penyelesaian.]

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### Notes

For cases on medical negligence, see 12 *Mallal's Digest* (4th Ed) paras 366–375; [1993] *Mallal's Digest* 1290.

For cases on damages for personal injuries and death, see 6 *Mallal's Digest* (4th Ed) paras 227–1028; [1989] *Mallal's Digest* 661–733; [1990] *Mallal's Digest* 498–575; [1991] *Mallal's Digest* 970–1036; [1992] *Mallal's Digest* 849–913; [1993] *Mallal's Digest* 704–741.

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For cases on road accidents due to negligence, see 12 *Mallal's Digest* (4th Ed) paras 392–573; [1989] *Mallal's Digest* 1501, 1506, 1510; [1990] *Mallal's Digest* 1183, 1192, 1194; [1991] *Mallal's Digest* 1964; [1992] *Mallal's Digest* 1656–1662; [1993] *Mallal's Digest* 1291–1292.

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### Cases referred to

H

*Bolam v Friern Hospital Management Committee* [1957] 2 All ER 118; [1957] 1 WLR 582 (folld)

*Chin Keow v Government of Malaysia & Anor* [1967] 2 MLJ 45 (folld)

*Katharayan v Ng Sup Moi & Anor* [1987] 1 MLJ 246 (folld)

*Kow Nan Seng v Nagamah & Ors* [1982] 1 MLJ 128 (folld)

I

*GS Mani (GS Mani & Co)* for the plaintiff.

*Americk Sidhu (Gan Eng Loke with him) (Megat Najmuddin Leong & Co)* for the first defendant.

*Halizah Aini bte Othman (S Pillai with her) (Senior Federal Counsel)* for the second and third defendants.

**James Foong J:** On 30 November 1988, the plaintiff while riding a motor cycle was collided into by a motor car driven by the first defendant. As he was injured, he was first admitted to the second defendants' hospital. His initial injuries were as follows:

- (i) diastasis pubic symphysis;
- (ii) fracture of midshaft right femur;
- (iii) fracture of right tibia/fibula; and
- (iv) hypovolemia.

He was immediately treated and operated upon by DW1, the orthopaedic surgeon. The femur was plated, tibia nailed and external fixation applied to the pelvis. An X-ray was done to the lower abdomen area and according to DW1, urethra injury was suspected. A catheter was inserted into the plaintiff's urethra. The orthopaedic operation seemed successful, and when clear urine was found to be discharging from the plaintiff, the catheter was removed on 2 December 1988. It was also the opinion of DW1 that since stainless steel plates were inserted into the body of the plaintiff, it would be prudent to remove the catheter as its presence (the catheter) would increase the chances of infection in the plaintiff's body. The plaintiff was then advised to move his limbs and if possible, walk a little. DW1 then went on leave on 11 December 1988.

On 13 December 1988, the plaintiff urinated blood and started to have difficulty with urination. He also developed fever. The plaintiff was then transferred to surgery, and at that material time the head of this department was DW2. A catheter was immediately inserted. DW2 then ordered the following treatment:

- (i) continuous bladder drainage for three weeks;
- (ii) four-hourly bladder wash out;
- (iii) urine FEME (full examination as well as microscopic examination); and
- (iv) urine culture and sensitivity every week.

According to the plaintiff's father, PW1, despite the presence of the catheter, urine continued to seep out from the side of the catheters. Blood was also discharged. From the record of the second defendants' hospital, the plaintiff was catheterized five times, beginning from 13 December 1988 to 1 January 1989.

On 20 December 1988, the laboratory results of the urine culture showed the presence of pseudomonas (a second generation of bacteria). DW2 then changed the antibiotic administered to the plaintiff. According to DW2, the plaintiff's temperature dropped and urine came through the catheter and they were clear. However, according to the PW1, the plaintiff's abdomen swelled during this period, and in order to urinate, the plaintiff had to depress his abdomen.

On 27 December 1988, when the plaintiff was catheterized for the fourth time since his admission, blood was again found in his urine. His

- A condition deteriorated with vomiting, nausea and abdomen discomfort. According to PW1, the plaintiff's speech began to slur.

27 December 1988 was also a date when the plaintiff was supposed to have a urethrogram test. This is an examination conducted with the assistance of a radiologist to determine whether a urethra is ruptured.

- B Unfortunately, this appointment had to be cancelled due to the unavailability of the radiologist who had taken an emergency leave on this date.

By 31 December 1988, the plaintiff had lapsed into a semi-coma and was according to PW1, 'in a state of stupor'. His urine was cloudy and mixed with blood.

- C On 1 January 1989, PW1 alleged that the plaintiff was in coma and was immediately transferred to the intensive care unit. There, he was treated by a team of doctors, consisting of the chief physician, the chief anaesthetist, the chief surgeon (DW2) and the orthopaedic surgeon (DW1), who had returned from leave. The treatment adopted during this period was to concentrate on balancing the plaintiff's electrolytes.

- D When DW1 examined the plaintiff on 1 January 1989, he was surprised at the condition of the plaintiff. He also noticed a suprapubic mass on the plaintiff's abdomen. Using a needle and a syringe, he punctured this mass and extracted some liquid. This he found to be urine. He immediately recatheterized the plaintiff, since he was of the opinion that catheter was not properly inserted. From then on, this suprapubic mass subsided and urine flowed out from the catheter. On this date, DW1 also removed plates from the plaintiff's body inserted to assist in the union of his fractured bones.

- F According to PW1, by 4 January 1989, the plaintiff was very weak and was in coma. He then approached one Dr Tayar who was in charge of balancing the plaintiff's electrolytes. He was informed by this doctor that though the plaintiff's electrolytes were balanced, his condition had not improved, possibly due to 'something wrong with his head'. As the second defendants' hospital did not possess a CAT scan, he advised PW1 to send the plaintiff to the University Hospital to receive further treatment.

- G On 6 January 1989, upon receiving two referral letters, one from Dr Tayar and the other from DW1, the plaintiff was transferred to the University Hospital. Though there was an accusation that the plaintiff discharged himself forcefully, this court finds that this transfer was done by mutual consent of both PW1 and the doctors of the second defendants' hospital.

- I Upon admission to the University Hospital, the plaintiff was treated by PW5, the urologist. A CAT scan was immediately carried out, and it showed no evidence of cerebral hematoma. A urethrogram was done four days later, where it revealed a complete rupture of the urethra with massive abscess in the pelvis cavity. The bladder was also detached from the plaintiff's urethra. The abscess was cleaned up, a catheter railroaded into the bladder and a suprapubic cystostomy performed. The plaintiff's condition then improved and according to PW1, he was told by PW5 that though constructive surgery was done, the plaintiff's 'head is gone'.

In the opinion of PW5, the plaintiff's condition was caused by 'an abscess in the pubic area as a result of the rupture of the urethra, and this abscess which remained undiagnosed caused him to have septicaemia, and this prolonged episode of septicaemia most likely affected his mental function'.

Dr Arumugasamy, a neuro consultant examined the plaintiff on 4 December 1989, after the plaintiff was discharged from the University Hospital. He found the plaintiff conscious and alert, but unable to vocalize. He was able to smile and mutter a few guttural sounds, but was for most part uncommunicative. He needed help to walk and he evidenced bilateral foot drop and contractures. He was unable to use his hands for fine movements, like buttoning his shirt or holding a pencil, pen or cup. He had, however, some gross shoulder and elbow movements. Attempts to make him walk on his own were unsuccessful. He swallowed with difficulty. He was unable to co-operate in the examination of his visual acuity and fields. There was evidence of weakness of his right arm and hand compared to the left. His left leg was also weak compared to the right. He was generally weak in all four extremities. He also had childish behaviour.

An MRI multi-planner and biecho examination of the plaintiff's head was carried out by Dr Arumugasamy. He discovered demyelination of the pons. The pons are brain stumps and demyelination was explained as loss of insulating fat around the nerve fibre of the pons. According to Dr Arumugasamy, this could have been caused by the plaintiff having a severe infection caused by his urinary problems with abscess in his pelvis. This infection may result in septicaemia shock that would cause confusion and disorientation. He could then have developed a pontine abscess which lead to infarction (lack of blood supply to the brain). The MRI imaging did indicate residual effects of such infarction of the pons. The other possibility is that the plaintiff may have developed a septic thrombosis (shutting off blood supply) of the vessel supplying blood to this area of the brain stem.

The pontine infarction, according to Dr Arumugasamy has 'resulted in his difficulty in swallowing and no doubt accounts for his previous disorientation and comatose condition with high temperature. The weakness in his legs could also be attributed to this documented problem, no doubt compounded by the fractures and prolonged immobilization from the multiple fractures'.

The first and foremost issue before this court is whether the second defendants were negligent in their treatment of the plaintiff while the plaintiff was under their care. The second defendants strenuously denied that they were negligent, and according to their doctors (DW1 and DW2) who were directly involved in treating the plaintiff, they had taken all necessary steps and exercised all reasonable skill according to accepted medical standards in treating the plaintiff. The plaintiff, however, through the opinions of Dr Arumugasamy and Dr Lee (PW5), and to a large extent that of Dr Khairuddin (DW3) (the consultant urologist attached to the third defendants' General Hospital in Kuala Lumpur), based his claim of negligent treatment by the second defendants.

- A It is without doubt that from the initial X-ray taken of the plaintiff when he was in the second defendants' hospital, the doctors there were of the opinion that a rupture of the plaintiff's urethra was suspected. According to almost all the doctors who testified, the correct approach to treat such injuries would either be the conservative or the aggressive method. The aggressive method is to proceed immediately to operate on the patient to carry out repair works on the urethra. As for the conservative approach, it is by inserting a catheter into the urethra and leaving it for two to three weeks, allowing it to heal on its own. In any event, whichever approach is adopted, it is also a general practice to carry out a test to ascertain whether the patient's urethra is actually ruptured. The test can either be in the form of a urethrogram or a cystoscopy. A urethrogram requires the aid of a qualified radiologist, while a cystoscopy can be performed by a surgeon. A cystoscopy is a visual examination with the aid of a small scope inserted into the urethra.

- D It was rather unfortunate that though DW1 inserted a catheter in the plaintiff's urethra when the plaintiff was admitted to his hospital, it was removed four days later, rather than being left there for two to three weeks. DW1 has given his reasons for doing so but, what was most regrettable was that after 13 December 1988, more than five catheters were inserted. With a suspected ruptured urethra, according to both PW5 and DW3, that was certainly dangerous, for a partial rupture may turn into a complete rupture.
- E In addition to this, each catheter inserted has a considerable risk of introducing bacteria into the body which will lead to infection.

- F From these, the obvious question is, why was a test to determine the exact condition of the plaintiff's urethra not carried out in the first place. DW2 explained that though there was a suspicion of urethra injury from the very beginning, when clear urine was obtained from the plaintiff who even subsequently discharged it without the assistance of a catheter, this suspicion diminished. In any event, a urethrogram was fixed on 28 December 1988, but unfortunately, it was cancelled due to the absence of the radiologist. Subsequently, when the plaintiff's condition deteriorated, the more important issue at hand was to save his life rather than determining whether his urethra was ruptured.

- H The plaintiff's condition began to take a turn for the worse on 13 December 1988. He urinated blood and his temperature rose. He had also difficulty in urinating. When his urine culture was returned on 20 December 1988, pseudomonas were present. Obviously, the plaintiff was having an infection. Though antibiotics were changed and the plaintiff's temperature subsided, and according to DW2 clear urine was obtained, the plaintiff was still experiencing difficulty in urination. By this time, his abdomen area had swollen and in order to urinate, he had to depress it.

- I As for the swelling of the plaintiff's abdomen, DW2 diagnosed it as 'bladder diverticular'. This was explained as 'out pouching of the bladder which may be due to inborn'. In this court's opinion, though this may be a possibility but, certainly remote when all signs pointed towards urethra and bladder injuries. In fact, DW2 has submitted in evidence that during this period he had also suspected urethra and bladder injuries causing urine to seep out into the plaintiff's abdominal cavity. But despite this

suspicion, this court fails to understand why the urethrogram test could not be brought forward as this would be a case of emergency. If this was not possible, DW2 could have carried out a cystoscopy himself. If he felt that he was not competent enough to carry out such task, or that the second defendants' hospital did not have the necessary facilities, a referral could have been made to the General Hospital in Kuala Lumpur, where a full urological unit exists.

Further, when suprapubic mass appeared and the various catheters inserted were not draining the plaintiff's urine appropriately, DW2 should have performed a suprapubic cystostomy. This is an accepted medical practice where a tube is inserted into the patient's suprapubic area to extract any liquid therefrom. Such a procedure would have prevented septicaemia. Instead, the plaintiff was catheterized many more times, each causing further and greater injuries and vulnerability to bacterial infection introduced by these foreign objects.

DW2 was well aware of the consequences of a ruptured urethra. According to him:

If rupture of the urethra is not treated, the urine will seep out to the surrounding areas. The patient will be unable to pass urine. The seepage will cause a roaring infection. There will be narrowing (stricture) of the urethra. If again not treated for a roaring infection, the patient will go into septicaemia. The patient may die.

The plaintiff's symptoms from 13 December 1988 to 6 January 1989 seem to fit exactly what DW2 has prescribed. The catheters inserted were not draining the plaintiff properly, instead they were seeping out by the sides; the appearance of the suprapubic mass when punctured by DW1 with a needle drew out urine; the plaintiff was in a comatose condition; all these seems to point towards only one very probable cause — the urethra injury. Despite this being suspected from the very beginning up to the day of the plaintiff's discharge from the second defendants' hospital, a more conclusive probe into this direction was never carried out. Though it was unfortunate that the urethrogram appointment was cancelled on 28 November 1988, a cystoscopy which was contemplated on various occasions from the time of the plaintiff's admission, was directed by DW2 as 'not necessary'.

After 28 November 1988, all treatments were concentrated on the saving of the plaintiff's life. This was by balancing his electrolytes. But why was there no concern about what caused his electrolytes to be imbalanced? DW2 agreed that septicaemia may affect the patient's well being, and cause nauseating feelings, yet no steps were taken to determine where it originated, particularly when there existed a strong suspicion of a probable cause — urethra injury.

All the above inactions were neglect, and coupled with the incorrect diagnosis and treatments, in the opinion of this court, caused and attributed substantially to the plaintiff's present condition. They were also failures of the second defendants' doctors in exercising a fair and reasonable standard of care and skill as expected of an ordinary professional possessing such skill and art when treating the plaintiff. (See the case of *Bolam v Friern*

A *Hospital Management Committee* [1957] 2 All ER 118; [1957] 1 WLR 582, and accepted by us through *Chin Keow v Government of Malaysia & Anor* [1967] 2 MLJ 45 and *Kow Nam Seng v Nagamah* [1982] 1 MLJ 128.) For these reasons, this court therefore finds the second and third defendants also liable to the plaintiff for damages suffered by him.

B This court shall now proceed with the assessment of damages.

For special damages, a sum of RM100,178 was agreed upon, except for the cost of nursing care. This agreed amount includes pre-trial and post-trial loss of earnings.

C Plaintiff's counsel is of the view that for the cost of nursing care, it should be a sum of RM1,860 per month. This is based on the view of Dr Arumugasamy when he stated that the plaintiff requires full time supervision. At the present moment, the plaintiff's mother is looking after him. Most of the time he is confined to a wheelchair. PW1 informed the court that he did enquire into the services of a maid, which cost about RM500 per month. Counsel for the second and third defendants argued that a sum of RM350 per month should be sufficient. After considering the condition of the plaintiff, this court finds that a sum of RM500 per month as nursing care should be reasonable.

E As for the multiplier to be used, the plaintiff's counsel was of the view that it should be 25 while the second and third defendants' counsel felt that it should be based on 20, using the annuity table. As for the first defendant's counsel, his view was 19 years (after having deducted six years for pre-trial cost of nursing care), using the annuity table for post-trial nursing care costs.

This court finds that it should be:

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- |     |                                                                                               |          |
|-----|-----------------------------------------------------------------------------------------------|----------|
| (a) | for pre-trial cost of nursing care<br>at RM500 per month for 70 months                        | RM35,000 |
| (b) | for post-trial cost of nursing care at RM500<br>per month for 20 years based on annuity table | RM74,773 |

G For pain, sufferings and loss of amenities, it can be broken down and awarded as follows:

- (1) *Fracture of femur*

This court awards a sum of RM12,000.

- H (2) *Fracture of tibia and fibula*

This court awards a sum of RM12,000.

- (3) *Fracture of pelvis*

This court awards a sum of RM16,000.

- I (4) *Abrasions and lacerations*

This court awards a sum of RM4,000.

- (5) *Brain injury and partial quadriplegia*

This court agrees with the submission of the first defendant's counsel that there is an overlapping of these two injuries.

Under these two heads of injury, this court awards a sum of RM200,000. A

Therefore, on general damages for pain, suffering and loss of amenities the total sum awarded is RM244,000.

As for interest, the following shall be awarded: B

- (1) there shall be 8%pa on the award of RM244,000 for general damages from date of service of writ to date of judgment;
- (2) there shall be interest of 4%pa on RM79,978 from date of accident to date of judgment; this RM79,978 is made up of: C

(a) agreed special damages other than loss of past earnings, cost of past nursing care, cost of special food in the future and wheelchair RM8,330

(b) loss of past-earnings (as agreed) RM36,648

(c) cost of pre-trial nursing care RM35,000 D

RM79,978

- (3) there shall be interest of 8%pa on the total judgment sum, from date of judgment to date of realization.

The next issue is the apportionment of damages. At an earlier stage of this case, Mohtar Abdullah J (as he then was) had ruled 100% liability against the first defendant for causing the motor accident in which the plaintiff was injured. As the result of this ruling, the first defendant has paid to the plaintiff an interim sum of RM50,000 by way of a court order. The first defendant is of the opinion that this should be sufficient to pay for their portion of the liability since there is no evidence of any disabilities to the plaintiff's limbs; the sum of RM50,000 should be sufficient to cover the orthopaedic injuries suffered by the plaintiff. E F

This court cannot accept this contention of the first defendant as there is no evidence to determine precisely that the present condition of the plaintiff, especially his limbs and immobility, are not due to his initial injuries. G

On this issue, this court shall apportion the damages awarded according to the degree of liability of the defendants. This method is adopted in the case of *Kathayarayan v Ng Sup Moi & Anor* [1987] 1 MLJ 246, and also followed in *Kow Nan Seng v Nagamah & Ors* [1982] 1 MLJ 128. For the degree of liability, this court finds the first defendant 20% responsible, and the second and third defendants 80% responsible. The quantum of damages shall therefore be apportioned according to the percentage of liability of each of the defendants. H

This court also awards costs to the plaintiff for this action. I

*Order accordingly.*